

Linda K. Whitney
Executive Director

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15 **BEFORE THE**
16 **MEDICAL BOARD OF CALIFORNIA**
17 **DEPARTMENT OF CONSUMER AFFAIRS**
18 **STATE OF CALIFORNIA**

19 In the Matter of the Accusation Against:

Case No. 12-2011-218372

20 **ALAN FULTON SCOTT**
21 **P.O. Box 328**
22 **Walnut Creek, CA 94597**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

23 **Physician and Surgeon's Certificate**
24 **No. C 39087**

25 Respondent.

26
27 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
28 proceeding that the following matters are true:

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Emily L. Brinkman, Deputy Attorney General.

2. Alan Fulton Scott, M.D. (Respondent) is represented in this proceeding by Robert W. Hodges, attorney at law, whose address of record is, McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP, 1211 Newell Avenue, Walnut Creek, California 94596-5331.

3. On or about February 4, 1980, the Medical Board of California issued Physician's and Surgeon's Certificate Number C 39087 to Alan Fulton Scott, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein. This certificate expires May 31, 2013.

JURISDICTION

4. Accusation No. 12-2011-218372 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 6, 2012. A copy of Accusation No. 12-2011-218372 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 12-2011-218372. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

1 **CULPABILITY**

2 8. Respondent admits that the allegations as set forth in Accusation No. 12-2011-218372
3 are true and agrees that cause exists for discipline against his California medical license pursuant
4 to sections 726, 729, 2234, and 2266 of the Business and Professions Code. Respondent no
5 longer wishes to practice medicine in California and hereby surrenders his Physician's and
6 Surgeon's Certificate No. C 39087 for the Board's formal acceptance.

7 9. Respondent understands that by signing this stipulation he enables the Board to issue
8 an order accepting the surrender of his Physician's and Surgeon's license without further process.

9 **RESERVATION**

10 10. The admissions made by Respondent herein are only for the purposes of this
11 proceeding, or any other proceedings in which the Medical Board of California or other
12 professional licensing agency is involved, and shall not be admissible in any other criminal or
13 civil proceeding.

14 **CONTINGENCY**

15 11. This stipulation shall be subject to approval by the Medical Board of California.
16 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
17 Board of California may communicate directly with the Board regarding this stipulation and
18 surrender, without notice to or participation by Respondent or his counsel. By signing the
19 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
20 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
21 to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary
22 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
23 action between the parties, and the Board shall not be disqualified from further action by having
24 considered this matter.

25 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of
26 License and Order, including facsimile signatures thereto, shall have the same force and effect as
27 the originals.
28

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 39087 issued to Respondent, Alan Fulton Scott, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. C 39087 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board, by certified mail, his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 12-2011-218372 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 12-2011-218372 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.


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1 ACCEPTANCE

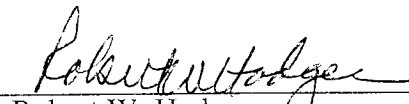
2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, Robert W. Hodges. I understand the stipulation and the effect it
4 will have on my Physician's and Surgeon's Certificate No. C 39087. I enter into this Stipulated
5 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
6 by the Decision and Order of the Medical Board of California.

7
8 DATED: 12/18/12


Alan Fulton Scott, M.D.

9
10 I have read and fully discussed with Respondent, Alan Fulton Scott, M.D., the terms and
11 conditions and other matters contained in this Stipulated Surrender of License and Order. I
12 approve its form and content.

13 DATED: 12/18/12


Robert W. Hodges
McNamara, Ney, Beatty, Slattery, Borges &
Ambacher LLP
Attorneys for Respondent

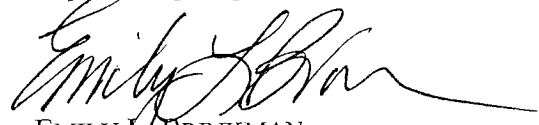
16 ENDORSEMENT

17 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
18 for consideration by the Medical Board of California of the Department of Consumer Affairs.

19 Dated: 12/27/12

20 Respectfully submitted,

21 KAMALA D. HARRIS
Attorney General of California
22 JOSE R. GUERRERO
Supervising Deputy Attorney General

23 
24 EMILY J. BRINKMAN
25 Deputy Attorney General
26 Attorneys for Complainant

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Exhibit A

Accusation No. 12-2011-218372

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
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7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 6, 2012
BY: [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 12-2011-218372

12 ALAN FULTON SCOTT
13 P.O. Box 328
14 Walnut Creek, CA 94597

ACCUSATION

15 Physician and Surgeon's Certificate
No. C 39087

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
22 2. On or about February 4, 1980, the Medical Board of California issued Physician and
23 Surgeon's Certificate Number C 39087 to Alan Fulton Scott (Respondent). Respondent's
24 certificate is renewed and current with an expiration date of May 31, 2013.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board)¹, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked or suspended for a period not to exceed one year; or the licensee may be placed on probation and may be required to pay the costs of probation monitoring or may have such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states:

"The Board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical Practice Act]

(b) Gross negligence

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the

¹ The term "Board" means the Medical Board of California. "Division of Medical Quality" shall also be deemed to refer to the Board.

licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence. . . ."

6. Section 726 of the Code provides that the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action.

7. Section 729 of the Code provides in pertinent part:

"(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

"(c)(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of the patient for the purpose of sexual arousal, gratification, or abuse.

"(c)(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code."

8. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

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ETHICAL PRINCIPLES

9. The medical profession has long subscribed to a body of ethical statements, set forth and adopted by the American Medical Association and known as *The Principles of Medical Ethics*.² The *Principles of Medical Ethics* represent standards of conduct which define the essentials of honorable behavior for a physician. The American Psychiatric Association has developed and adopted *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry (2009 Edition)* which state:

"All physicians should practice in accordance with the medical code of ethics set forth in the *Principles of Medical Ethics* of the American Medical Association. An up-to-date expression and elaboration of these statements is found in the *Opinions and Reports of the Council on Ethical and Judicial Affairs of the American Medical Association*. Psychiatrists are strongly advised to be familiar with these documents. ... While psychiatrists have the same goals as all physicians, there are special ethical problems in psychiatric practice that differ in coloring and degree from ethical problems in other branches of medical practice, even though the basic principles are the same." (Foreword)

The following specific parts of the adopted *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry (2009 Edition)* are applicable:

A. Section 2 states:

"A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competency, or engaging in fraud or deception, to appropriate entities."

The *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* stated the following in 1993 and in all subsequent updates:

"The requirement that the physician conduct himself/herself with propriety in his or her profession and in all the actions of his or her life is especially important in the case of the psychiatrist because the patient tends to model his or her behavior after that of his or her psychiatrist by identification. Further, the necessary intensity of the treatment relationship may tend to activate sexual and other needs and fantasies on the part of both patient and psychiatrist, while weakening the objectivity necessary for control. Additionally, the inherent inequality in the doctor-patient relationship may lead to exploitation of the patient. Sexual activity with a current or former patient is unethical."

B. Section 5 states:

"A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education...."

The *Principles of Medical Ethics with Annotations Especially Applicable to*

² These same principles have been in effect since 1996 when Respondent began treating patient D.K.

1 Psychiatry states the following:

2 "Psychiatrists are responsible for their own continuing education and should be
3 mindful of the fact that theirs must be a lifetime of learning."

4 **FACTS COMMON TO ALL CAUSES FOR DISCIPLINE**

5 10. On or about April 1996, patient D.K.³ was referred to Respondent to treat her for
6 post-traumatic stress disorder (PTSD). When D.K. began treatment with Respondent he was
7 aware that she was dealing with PTSD issues following an incident with her minister, that she
8 was having marital problems, and that she was dealing with issues related to sexual trauma that
9 occurred during her childhood. Respondent was also married with children.

10 11. On or about November 1996, Respondent and D.K. engaged in a sexual relationship
11 that continued over the next fifteen (15) years.

12 12. During the first session between D.K. and Respondent, Respondent told D.K. that his
13 former medical partner was convicted of child abuse and sentenced to state prison. D.K. was
14 moved by this story and Respondent's feelings related to it. D.K. believed that Respondent
15 would understand her own issues and help her throughout the therapy process. D.K. began seeing
16 Respondent for therapy sessions two times per week and Respondent placed D.K. on an anti-
17 depressant.

18 13. Respondent shared other personal stories with D.K. during the early therapy sessions.
19 Respondent spoke about his wife and marriage, his friends, and his own personal spiritual
20 longings and desires. Respondent told D.K. he did not practice "traditional therapy" because he
21 also considered spiritual development important to his patients. Over the years, Respondent
22 spoke to D.K. about God, read sacred poetry to her, and provided her with sacred poetry
23 recordings. Respondent also introduced D.K. to a spiritual master, Meher Baba, who was
24 influential to him, and gave Meher Baba's book to D.K. to read along with the Bible.

25 14. During the first seven months of therapy, D.K. told Respondent about being a victim
26 of incest as a young child. She also shared with him the problems she was having in her

27 ³ Patient initials will be used to protect the identity of the patients. Respondent can learn
28 the identity of the patients through discovery.

1 marriage. During one therapy session, D.K. shared with Respondent that she had not had sex
2 with her husband for many years. Respondent asked D.K. if she had any erotic experiences. At
3 that point, Respondent got up from his chair and sat next to D.K. on the couch. Respondent was
4 shaking and asked D.K. to hold him. Respondent and D.K. began kissing and then had sex for the
5 first time.

6 15. Shortly thereafter, Respondent moved D.K.'s therapy sessions to the last appointment
7 of the day so that they could spend more time together. They also began exchanging gifts and
8 frequently eating breakfast, lunch, and sometimes dinner together.

9 16. Respondent and D.K. also began communicating at night over the internet, some
10 nights for as long as three or more hours. Over the course of fifteen years, Respondent created
11 four different email accounts via hushmail.com, yahoo.com, excite.com, and ca.astound.net in
12 order to communicate privately with D.K.

13 17. Within the first two years of the relationship, D.K. expressed concerns to Respondent
14 that she was paying for sex because every therapy session ended in sex. Around this same time,
15 Respondent complained to D.K. about having to do all of his housework at home along with
16 cleaning his office. D.K. then began cleaning Respondent's office in exchange for therapy
17 sessions. She also began purchasing flowers and food for his office with her own money.
18 Respondent gave D.K. a key to his office and she continued cleaning his office for the next
19 twelve (12) years.

20 18. At some point, Respondent told D.K. that he loved her and had never felt such a
21 connection with any other woman. He told her she was his best friend and closest spiritual
22 companion. D.K. felt the same way about Respondent.

23 19. Over time, Respondent and D.K. began treating his office as their "home." They had
24 sex in his office and he displayed gifts they exchanged. He also displayed other gifts given to
25 him by D.K. in his own home that he shared with his wife.

26 20. Throughout the years, D.K. and Respondent took trips together to Florida and
27 throughout California.
28

1 21. D.K. also became involved in Respondent's personal life by sharing the same friends.
2 She met two of his five children and his wife; she became friends on Facebook with a third child;
3 and, she got to know several of his patients. Respondent also met D.K.'s child and husband
4 several times.

5 22. During their relationship, Respondent also told D.K. about his own personal struggles
6 with sex addiction and pornography, that he had had sex with three other patients, that his second
7 wife had once been a patient, and his own spiritual struggles. Respondent would email or text
8 sexually explicit messages to D.K., including naked images of himself or other pornographic
9 images and videos and asked that D.K. reply with similar messages. Respondent would also
10 show D.K. pornographic videos and images when they were together and tell her it was part of his
11 "compulsion" and plans to "heal."

12 23. At one point in the relationship, D.K. became concerned about Respondent's
13 relationship with two patients (D.M. and M.R.). On one occasion, D.K. came into the office
14 following a therapy session between Respondent and D.M. and smelled massage oil. Respondent
15 stated he allowed D.M. to give him a massage for his birthday. Respondent eventually hired
16 D.M. to create office procedures and policies for him.

17 24. On or about October 2007, D.K. became aware that Respondent was sexually
18 involved with patient M.R. when he accidentally sent D.K. an email meant for M.R. Respondent
19 admitted to the sexual relationship with M.R. to D.K. During Respondent's interview with the
20 Medical Board he admitted he kissed M.R.

21 25. On or about September 23, 2010, Respondent emailed D.K. telling her he could not
22 see her on Friday (their standing office appointment) because his wife found out they were
23 sexually involved. He stated he was stopping all communication and contact with D.K.; however,
24 they continued to exchange emails. Respondent and D.K. also saw each other on four different
25 occasions after September 23, 2010.

26 26. During Respondent's interview with the Medical Board investigator on July 23, 2012
27 at the Board's Pleasant Hill District Office, he admitted he engaged in a sexual relationship with
28 D.K. for over fifteen (15) years.

27. On or about April 1, 2011, Respondent and D.K. met and had sex for the last time. Respondent admitted during his Board interview that he and D.K. had engaged in sexual relations on April 1, 2011.

28. In an email to D.K. dated May 17, 2011, he admitted he began a sexual relationship with D.K. while she was his patient.

29. During Respondent's interview with the Board, he also admitted he never formally terminated the doctor-patient relationship with D.K. or discussed termination of the doctor-patient relationship with her in anyway. He also never referred her to any other physician for continued treatment. Respondent also stated that he no longer had medical records for D.K. because he destroyed them.

30. Respondent continued to prescribe medication to D.K. through June 2011, including for the controlled substances diazepam and lorazepam. Email records between Respondent and D.K. also indicate that as of November 11, 2010, he was prescribing sleep medications and valium to D.K. without conducting an examination of her or maintaining any medical records.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Sexual Relations with Patient, Gross Negligence, Repeated Negligent Acts, Violation of Ethical Standards)

31. Respondent's conduct in entering into a sexual relationship with patient D.K. constitutes unprofessional conduct, and/or gross negligence, and/or repeated negligent acts, and/or a violation of ethical standards, and is cause for discipline, whether proven jointly or separately or in any combination thereof, under Business and Professions Code sections 2234 and/or 2234(b), and/or 2234(c) and/or 726 and/or 729.

32. Respondent's conduct in entering into a social and sexual relationship with patient D.K. constitutes unprofessional conduct, and/or gross negligence, and/or repeated negligent acts, and/or a violation of ethical standards, and is cause for discipline, whether jointly or separately or in any combination thereof, under Business and Professions Code sections 2234 and/or 2234(b), and/or 2234(c) and/or 726 and/or 729.

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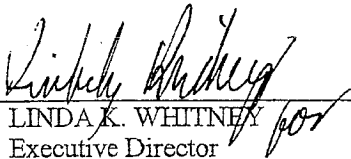
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4. Taking such other and further action as deemed necessary and proper.

November 6, 2012

DATED: _____



LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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